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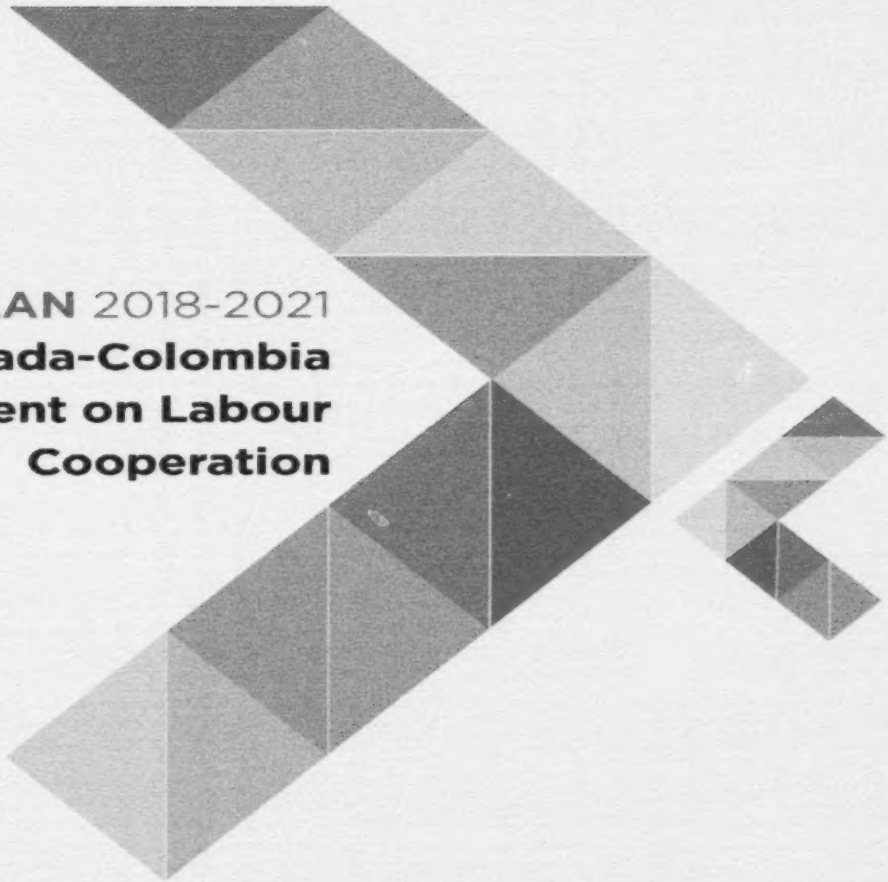

ACTION PLAN 2018-2021
Under the Canada-Colombia Agreement on Labour Cooperation

LT-307-05-18E

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ACTION PLAN

UNDER THE CANADA-COLOMBIA AGREEMENT

ON LABOUR COOPERATION 2018-2021

This Action Plan is developed as a result of recommendations made by Canada in the context of the Public Communication CAN 2016-1 (Colombia) submitted in May 2016 to the Canadian National Administrative Office (NAO) by the Canadian Labour Congress and five Colombian labour organizations pursuant to Article 10 and Annex 2 of the Canada-Colombia Agreement on Labour Cooperation (CCOALC), done at Lima, on November 21, 2008.

The allegations raised by the submitters of the Public Communication included information on two specific cases: (1) Pacific Rubiales, an oil extraction company, where reported events occurred between 2011 and 2013 at the Campo Rubiales fields and involved the Workers Trade Union (Union Sindical Obrera, USO); and (2) Ingenio La Cabaña, a sugar production and processing company, where the events exposed occurred between 2012 and 2015 at the La Cabaña plantation and sugar mill, involving the National Agricultural Industry Workers Union (Sindicato Nacional de Trabajadores de la Industria Agropecuaria, SINTRAINAGRO). In both cases, the submitters allege that the abuse of subcontracting, systematic anti-union practices and the climate of violence that prevails in Colombia have had a negative impact on their rights as organizations, particularly in the exercise of their rights to freedom of association and collective bargaining.

In January 2017, the Canadian NAO published the *"Review of Public Communication CAN 2016-1. Report issued pursuant to the Canada-Colombia Agreement on Labour Cooperation"* in which the following four general recommendations addressed to the Government of Colombia are proposed:

I) In order to protect workers' fundamental rights to freedom of association and collective bargaining, remove legal vehicles used to undermine these rights (i.e. collective pacts, union contracts, illegal intermediation and subcontracting);

II) Strengthen compliance and enforcement of labour laws through labour inspection that focuses on preventive measures, provides effective advice, and efficiently collects fines imposed;

III) Strengthen efforts to fight impunity and violence in the country by bringing those responsible to justice; and

IV) Evaluate and report on efforts to promote freedom of association and free collective bargaining.

On February 22, 2017, the Canadian Minister of Employment, Workforce Development and Labour sent a communication to the Government of Colombia in which it stated that the report published by the Canadian NAO concluded that "*the full exercise of association and collective bargaining rights faces serious challenges. Concerns remain about whether the current labour law and policy framework including enforcement processes are sufficient to prevent abuse of subcontracting, discriminatory anti-union practices, and to protect the exercise of freedom of association and collective bargaining rights. The report also raises serious concerns about the prevailing climate of violence and excessive use of force by police authorities, in particular, by the Mobile Anti-disturbances Squadron (ESMAD, by its Spanish acronym).*"

In light of the above, the Canadian Minister of Employment, Workforce Development and Labour requested to the Colombian Minister of Labour to hold ministerial consultations pursuant to Article 12 of the CCOALC to address and implement the above-mentioned recommendations. On March 8, 2017, the Colombian Minister of Labour sent a communication accepting the consultations and expressing its appreciation for "*the Government of Canada's cooperation and interest in moving forward to jointly develop an Action Plan that implements the recommendations of the report and takes into account the reality of Colombia*".

As part of the ministerial consultations, and with a view to developing this Action Plan, Canadian and Colombian officials from the respective Ministries of Labour held six meetings by teleconference (March 13, June 30,August 18, 2017) and face-to-face (July 16, October 26–27, December 21-22, 2017) in Bogotá, Washington, D.C., and Ottawa respectively.

Before turning to the details of this Action Plan, it should be noted that significant results were achieved with the active participation of the Government of Canada and the Government of Colombia in the two cases mentioned in the second paragraph. In the case of Ingenio La Cabaña, by means of Resolution 2468 of July 14, 2017, the Special Investigations Unit of the Colombian Ministry of Labour imposed sanctions related to the illegal use of labour intermediation pursuant to Article 63 of Law 1429 of 2010. In the case of Pacific Rubiales, union organizations and collective bargaining practices were strengthened, which resulted in a significant number of unionized workers, as shown by the number of members of the USO (which has currently 23,828 affiliates) according to the numbers provided by trade unions to the Colombian Ministry of Labour.

In conclusion, the Government of Colombia reaffirms its commitment to consolidate its efforts in labour matters by recognizing the importance of ensuring the full exercise of Colombian workers' rights; preventing, investigating, and effectively sanctioning illegal intermediation and subcontracting; sanctioning violence against union leaders and fighting against impunity and violence in the country. In support of this commitment, the Government of Canada, as a strategic partner, will engage with the Government of Colombia in addressing the issues identified under the four general recommendations and assessing the progress of the measures adopted in this Action Plan, thus contributing to achieving its objectives. This Action Plan will be implemented within three years after the date of signature by the Government of Canada and the Government of Colombia, hereinafter referred to as the "Governments".

RECOMMENDATIONS AND MEASURES ADOPTED

RECOMMENDATION 1: In order to protect workers' fundamental rights to freedom of association and collective bargaining, remove legal vehicles used to undermine these rights

Despite the progress, reforms, and improvements in recent years, the Government of Colombia understands the importance of continuing its efforts to effectively guarantee the exercise of workers' labour rights. The Colombian Government has taken a number of measures focused primarily on ensuring labour law compliance through the strengthening of its inspection system. However, the Government of Canada believes that there is a need for an in-depth analysis of legal reforms on labour which it has not yet been materialized nor has reached consensus in Colombia. The Government of Colombia has indicated that a reform of the legal framework aimed at eliminating collective pacts and union contracts should be discussed more broadly, including in the legislative branch. While this debate is yet to be conducted, the Government of Colombia will focus on monitoring and sanctioning the misuse of legal vehicles such as collective pacts and union contracts.

1.1 ELIMINATE UNION CONTRACTS

In the report published by the NAO, the Government of Canada noted that union contracts have been used as illegal intermediation mechanisms in which, by using civil contracts workers may not enjoy the protections of their rights afforded in an employment relationship. The report also states that union contracts present additional risks to the independence of participating unions.

In response to this recommendation, the Government of Colombia has focused its efforts on labour inspections, which have resulted in a reduction in the number of existing union contracts particularly in the export economic sectors. However, the Government of Canada reserves the right to resume discussions with the Government of Colombia regarding the elimination of union contracts if they come at the expense of labour and constitutional rights, or if their use increases.

In this context and under this Action Plan, the Government of Colombia adopted the Ministerial Resolution 2021 of May 9, 2018, to monitor the misuse of union contracts, i.e. those used for illegal intermediation as well as those where constitutional, labour, and social rights are denied.

In order to ensure compliance with the Ministerial Resolution, the Government of Colombia will:

a. Characterize or disaggregate data about existing union contracts by number for each export economic sector. This measure will be taken immediately and the consolidated information will be provided in May 2018.

b. Implement a single registry of union contracts, with assistance from the Government of Canada, in 2018.

c. Monitor existing union contracts as of the date of signature of this Action Plan and submit a report every June 30 and December 30, or on the following business day, on union contracts being filed with the Colombian Ministry of Labour. The first report will be submitted on June 30, 2018, and thereafter in 2019, 2020, and 2021.

d. Carry out, through the Special Investigations Unit, the exclusive investigation of the administrative sanctioning procedure on the misuse of union contracts when charges are laid, in such a way that any challenge or appeal of an administrative decision will first be handled by the Special Investigations Unit and then by the Inspection, Monitoring, Compliance and Territorial Management Directorate.

e. Complete ongoing investigations on union contracts by October 31, 2018, and carry out new investigations in accordance with the timeframes established under the law.

f. Submit a management report of the Special Investigations Unit every six months on union contracts. These reports will be submitted to the Government of Canada on June 30 and December 30, or on the following business day, as of June 30, 2018, and thereafter in 2019, 2020, and 2021.

g. Conduct 30% of the total planned inspections in 2018, 25% in 2019, 20% in 2020, and 15% in 2021, in accordance with the measure adopted under item (a), to monitor union contracts in particular those that currently exist in export economic sectors.

1.2 ELIMINATE COLLECTIVE PACTS

Bargaining between employers and non-unionized workers is currently a legal possibility in Colombia. A number of measures to prevent the abuse of collective pacts within the existing regulatory framework have been taken. Nonetheless, to address the concerns and criticism held by the Government of Canada in the NAO's report, the Government of Colombia submitted the bill named "That regulates the negotiation of collective pacts" to Colombia's tripartite body for social dialogue, i.e. the Standing Committee on the Coordination of Wages and Labour Policies. The bill includes measures aimed at prohibiting the negotiation of collective pacts in workplaces where there is a union. In addition, by way of Resolution 3783 of 2017, the Colombian Ministry of Labour strengthened and enhanced the role of the Special Investigations Unit to ensure that priority is given to cases of misuse of collective pacts where the right to associate freely is undermined.

The Government of Canada reserves the right to resume discussions regarding the elimination of collective pacts from Colombia's labour legal framework if they come at the expense of labour and constitutional rights.

In this context and under this Action Plan, the Government of Colombia will:

a. Carry out, through the Special Investigations Unit, the exclusive investigation of processes initiated in 2018 regarding misuse of collective pacts, in such a way that any possible challenge or appeal of an administrative decision will first be handled by the Special Investigations Unit, and then by the Inspection, Monitoring, Compliance and Territorial Management Directorate.

b. Complete ongoing administrative sanctioning procedures for collective pacts by October 31, 2018, and carry out new administrative sanctioning procedures in accordance with the applicable Colombian law. The Government of Colombia will characterize or disaggregate data on the number of existing investigations on the misuse of collective pacts in each export economic sector as of the date of signature of this Action Plan, and will submit a report in May 2018.

c. Submit to the Government of Canada a management report on the Special Investigations Unit every six months on collective pacts. These reports will be submitted on June 30 and December 30, or on the following business day, as of June 30, 2018, and thereafter in 2019, 2020 and 2021.

d. Ensure that the Colombian Ministry of Labour and the Attorney General's Office cooperate to achieve results in administrative and criminal investigations regarding collective pacts.

e. Conduct 35% of the planned inspection visits in 2018, 30% in 2019, 25% in 2020, and 20% in 2021, to monitor the misuse of collective pacts, according to the disaggregation conducted under recommendation 1.2 (b).

f. Further the discussions at the Standing Committee on the Coordination of Wages and Labour Policies on the bill named "That regulates the negotiation of collective pacts" based on the study carried out under recommendation 1.5 (b), so that the Government of Colombia has the necessary elements to introduce this bill in Congress.

1.3 ELIMINATE THE MISUSE OF SHORT-TERM CONTRACTS

Under this Action Plan, the Government of Colombia will:

a. Build an outreach plan to promote labour rights and produce educational materials on forms used by employers to disguise the employment relationship. The outreach plan will be permanent and an integral part of the annual planning of the Inspection, Monitoring, Compliance and Territorial Management Directorate or the office in charge of the outreach. The outreach plan will be provided to the Government of Canada prior to its implementation in May 2018.

b. Adopt guidelines to allow labour inspectors to identify anti-union practices under fixed-term contracts or contracts for a specific task or output. These guidelines will be adopted by December 2018 and included in the training programme for labour inspectors.

1.4 IMPLEMENT MEASURES TO REDUCE THE WIDESPREAD AND SYSTEMATIC PRACTICES OF ILLEGAL LABOUR INTERMEDIATION AND SUBCONTRACTING

The widespread and systematic practices of illegal labour intermediation and subcontracting may occur due to a lack of understanding by workers and employers of contracting practices responsibilities resulting from contracts. Therefore, it is important to strengthen training programmes for labour inspectors in a way that these practices are identified early and dealt with promptly. In this context and under this Action Plan, the Government of Colombia will:

a. Carry out public awareness campaigns and job fairs, as well as disseminate guidance materials on labour rights and hiring practices, including different forms of contracting. A roadmap for the implementation of the awareness campaigns will be developed and shared with the Government of Canada in May 2018, including the schedule of job fairs and samples of the educational materials. The roadmap will be permanent and an integral part of the annual planning of the Inspection, Monitoring, Compliance and Territorial Management Directorate or office assigned for its implementation. The Government of Colombia will jointly work with the Government of Canada to establish specific objectives on the number of awareness campaigns and job fairs to be carried out during the implementation of this Action Plan.

b. Establish, with assistance from the Government of Canada, an objective regarding the signing of formalization agreements in 2018 and in the following years of the implementation of this Action Plan, in accordance with Law 1610 and Resolution 321 of 2013.

c. Strengthen the inspectorate system by hiring on a permanent basis 804 inspectors who are currently hired on a provisional basis. A merit-based selection process (No. 428 of 2016) is being conducted and will be completed with the appointment of inspectors on a permanent basis by the end of the first year of implementation of this Action Plan.

d. Be present by means of mobile inspections in nine districts (18 municipalities) where there is no on-site labour inspection to receive complaints and grievances about labour rights violations. The schedule of mobile inspections will be shared with the Government of Canada in May 2018.

e. Provide ongoing training to labour inspectors on illegal labour intermediation and identification of permanent core business functions in specific export economic sectors (palm, flowers, ports, sugar and mines). This training programme will be provided in line with recommendations 1.4.2 (b), 1.4.3 (a) and 2.4.

1.4.1. REPEAL DECREE 583 (WHICH HAS, IN PRACTICE, ENABLED THE SUBCONTRACTING OF PERMANENT CORE BUSINESS FUNCTIONS) AND REPLACE IT WITH A LEGAL INSTRUMENT THAT UNAMBIGUOUSLY AUTHORIZES LABOUR INSPECTORS TO COMBAT THE ABUSE OF INTERMEDIATION AND SUBCONTRACTING

In response to this recommendation, the Government of Colombia has repealed Decree 583 on April 18, 2018, through Decree 683 of 2018 which takes effect from the date of its publication.

In light of the recent ruling issued by the Second Chamber of the Council of State which repealed Articles 2 and 4 (paragraphs one and three), 5, 9, and 10 of Decree 2025 of 2011 which partly regulates Law 1233 of 2008 and Article 63 of Law 1429 of 2010, the Government of Colombia will:

a. Ensure that the Ministerial Resolution 2021 of May 9, 2018, takes into account the decision of the Council of State and complies with the legal framework. This resolution will address the issue of cooperatives in a manner that establishes guidelines so that the use of cooperatives for illegal labour intermediation does not re-emerge.

b. Submit a report to the Government of Canada on June 30 and December 30, or on the following business day, beginning June 30, 2018, and thereafter in 2019, 2020 and 2021 on the number of inspections carried out on the cooperatives, particularly those in the export economic sectors.

1.4.2. ENSURE THAT LABOUR INSPECTORS ARE EMPOWERED TO IDENTIFY AND ADDRESS SITUATIONS WHERE INTERMEDIATION OR SUBCONTRACTING IS BEING USED TO DISGUISE A DIRECT EMPLOYMENT RELATIONSHIP, REGARDLESS OF THE FORMALITIES ASSOCIATED WITH THE RELATIONSHIP

By way of Resolution 3783 of 2017, the Colombian Ministry of Labour created the Internal Working Group for Labour Inspection Training and Analysis, responsible for the identification and organization of training programmes. In 2018, 1.9 million Colombian pesos (approximately CAD$ 844,000) are allocated to the training programme, an increase of 986 million (approximately CAD$ 452,000) with respect to the budget for 2017. In this context and under this Action Plan, the Government of Colombia will:

a. Continue working in collaboration with the International Labour Organization (ILO) to update the investigation tools used by labour inspectors to identify and address situations where subcontracting is used to disguise the actual employment relationship. The tools will be updated and operational in May 2018.

b. Train inspectors in (i) identifying potential misuse of labour intermediation and subcontracting; and (ii) understanding the administrative sanctioning procedures to ensure that inspectors comply with the timeframes and make prompt decisions. Four training sessions will be held in the first six months and additional training sessions will be scheduled annually thereafter throughout the implementation of this Action Plan.

1.4.3. DEVELOP GUIDELINES FOR LABOUR INSPECTORS TO IDENTIFY PERMANENT CORE BUSINESS FUNCTIONS IN SPECIFIC ECONOMIC SECTORS

Given the extensive developments in jurisprudence related to the permanent core business function concept and the importance of this jurisprudence in identifying illegal labour practices, particularly in export economic sectors, the Government of Colombia will:

a. Adopt guidelines for labour inspectors on the enforcement of labour law regarding permanent core business functions in specific export economic sectors (palm, flowers, ports, sugar and mines). These guidelines, adopted through the Inspection, Monitoring, Compliance and Territorial Management Directorate, will be an integral part of the training programme for labour inspectors. The Government of Colombia will submit to the Government of Canada reports every six months on June 30 and December 30, or on the following business day, beginning June 30, 2018, and thereafter in 2019, 2020 and 2021. These reports will include information about the progress and key outcomes of training sessions.

b. Be present by means of mobile inspections in nine districts (18 municipalities) where there is no on-site labour inspection to receive complaints and grievances about labour rights violations. The schedule of mobile inspections will be shared with the Government of Canada in May 2018.

c. Conduct 5000 inspection visits in 2018 (preventive and reactive) to ensure compliance with labour standards. The Government of Colombia will work jointly with the Government of Canada to establish specific objectives for the number of visits in each export economic sector during the implementation of this Action Plan.

1.4.4. DIRECT ENFORCEMENT RESOURCES TO ENSURE THAT CIVIL CONTRACTS (E.G. SAS OR SIMPLIFIED STOCK CORPORATION, ASSOCIATED WORK COOPERATIVES) ARE NOT USED TO DENY WORKERS SOCIAL OR LABOUR PROTECTION PROVIDED UNDER THE LAW

In response to this recommendation, the Government of Colombia will:

a. Jointly review with the Government of Canada the educational material on appropriate forms of labour intermediation in May 2018.

b. Build an outreach plan on collective and individual labour rights to disseminate the educational material referred to in 1.4.4 (a). The outreach plan will be an integral part of the annual planning of the Inspection, Monitoring, Compliance and Territorial Management Directorate by May 2018.

c. Carry out mobile inspections to hear complaints or grievances about labour rights violations in communities where there is no on-site labour inspection in line with recommendations 1.4 (d) and 1.4.3 (b). The schedule of the mobile inspections will be shared with the Government of Canada in May 2018.

d. Conduct 5000 inspection visits in 2018 (preventive and reactive) to ensure compliance with labour standards. The Government of Colombia will work jointly with the Government of Canada to establish specific objectives for the number of visits in each export economic sector during the implementation of this Action Plan.

1.5 CONSIDER CREATING A SPECIALIZED QUASI-JUDICIAL REGULATORY BODY TO MAKE DECISIONS ON THE REGISTRATION AND DISSOLUTION OF UNIONS AND HEAR COMPLAINTS OF UNFAIR LABOUR PRACTICES AND DISCRIMINATION BY BOTH UNIONS AND EMPLOYERS

In response to this recommendation, the Government of Colombia will:

a. Review, with assistance from the Government of Canada, Canadian experiences regarding trade union registration and dissolution; processing of complaints about unfair and discriminatory practices; union representation; and union independence vis-à-vis the employer. To this end, the Governments will establish a cooperative work plan by June 30, 2018.

b. Conduct a study, as part of the exchange of experiences above-mentioned, on the status of the labour movement in Colombia, including perception of trade unionism; potential structural causes for the low rate of unionization; and barriers which undermine unions and collective bargaining. This study will be concluded by December 2018.

c. Submit in the first six months of 2019 the results of the study about the Government of Canada's experiences to the tripartite Standing Committee on the Coordination of Wages and Labour Policies for its consideration.

RECOMMENDATION 2: Strengthen compliance with and enforcement of labour laws through a labour inspectorate that focuses on preventive measures, provides effective advice, and efficiently establishes and collects fines

Labour inspections play a key role in labour law compliance and enforcement. A strengthened and more effective labour inspectorate is instrumental in protecting workers' rights and helping employers understand and comply with their obligations.

2.1 ENSURE THAT WORKERS HAVE TIMELY ACCESS TO JUSTICE IN A MANNER THAT WORKERS CAN CLAIM LABOUR RIGHTS, SUCH AS REINSTATEMENT OR SEVERANCE FOR DISMISSALS, IN THE ORDINARY JUDICIAL PROCESS

Given the need to provide timely access to justice and to reduce the delays in the processing of labour disputes, the Government of Colombia appointed 12 judges to the Chamber of Labour of the Supreme Court in July 2017. In addition, 65 small-claim courts were created to resolve small-scale labour claims and the Ten-Year Justice Plan was issued with the purpose of promoting improving coordination, efficiency and effectiveness, and modernizing the administration of justice. Given the above-mentioned actions, the Government of Colombia, under this Action Plan, will:

a. Submit an annual report to the Government of Canada regarding:

- the program of actions of the Labour Chamber of the Supreme Court to reduce delays;
- the progress made on the implementation of the Ten-Year Justice Plan;
- the achievements in terms of access to justice by citizens (for example, labour legal consultations, free legal assistance, etc.).

2.2 STREAMLINE THE ADMINISTRATIVE PROCESS FOR MORE EFFECTIVE IMPOSITION OF FINES, INCLUDING CONSIDERING THE HARMONIZATION OF EXISTING SANCTIONS IN BOTH THE SUBSTANTIVE LABOUR CODE AND OTHER LABOUR LAWS

The Government of Canada underlines the importance that fines imposed in the administrative sanctioning process act as effective deterrents to non-compliance and that effective processes for the collection of fines are in place. In this regard, the Government of Colombia will:

a. Establish an annual plan to reduce the delays in processing labour disputes, based on a characterization of the investigations. The plan will be submitted to the Government of Canada by June 15, 2018.

b. Implement the Electronic System for Case Management (SEMAC, by its Spanish acronym) in 15 labour inspectorates at the local level in the first year of implementation of this Action Plan. The SEMAC is currently implemented in 35 regional administrations.

c. Train labour inspectors to comply in the conduct of their investigations with the requirements of the Code of Administrative Procedure and Administrative Litigation (CPACA, by its Spanish acronym).

2.3 ENSURE THAT COLOMBIA'S PUBLIC COLLECTOR (CISA) EFFECTIVELY COLLECTS THE FINES AND MAKES THE ACHIEVED RESULTS KNOWN IN THE SHORT AND MEDIUM TERM, INCLUDING AN ANALYSIS OF WHETHER THE FINES IMPOSED HAVE A SUFFICIENT DETERRENT EFFECT

In order to make the process for the collection of fines more effective, the Government of Colombia did not renew the contract with the public collector CISA (Central de Inversiones S.A.), but has strengthened its working relations with Colombia's National Apprenticeship Service (SENA by its Spanish acronym). Furthermore, the Government of Colombia is publishing quarterly reports on the activities of the Inspection, Monitoring, Compliance and Territorial Management Directorate to make its work more visible and transparent. In this context, the Government of Colombia will:

a. Connect both the SEMAC and the SENA systems to monitor and improve the process for the collection of fines before the end of the second year of implementation of this Action Plan.

b. Share with the Government of Canada, in May 2018, a Joint Circular of the Ministry of Labour and the SENA for the transfer of fines imposed in a timely manner for their effective enforcement by the SENA.

c. Sign a Memorandum of Understanding between the Ministry of Labour, the SENA, and the ILO by June 2018 to establish guidelines for the collection of fines imposed and ensure the connection of both the SEMAC and the SENA systems.

d. Continue publishing quarterly reports produced by the Inspection, Monitoring, Compliance and Territorial Management Directorate on data on labour inspections, including sanctions in priority sectors, misuse of collective pacts and union contracts, and fines imposed and enforced. These reports will be available to the public and posted on the website of the Ministry of Labour: http://www.mintrabajo.gov.co

2.4 PROVIDE LABOUR INSPECTORS THE APPROPRIATE TRAINING AND RESOURCES TO EFFECTIVELY PERFORM THEIR DUTIES, INCLUDING PREVENTIVE AND PROACTIVE LABOUR INSPECTIONS

In its 2018 budget, the Government of Colombia allocated 8,000 million pesos (approximately C$3.5 million) for inspection, monitoring, and compliance activities on labour. This represents an increase of 60% (about 5,000 million pesos or C$2.2 million) over the previous year. The Colombian Ministry of Labour also created an internal working group responsible for providing and organizing training programmes according to the needs of labour inspectors (Resolution 3783 of October 2017). Moreover, the number of labour inspectors trained has gradually increased in the last four years and will continue to do so through the establishment of an ongoing training system. In this context, the Government of Colombia will:

a. Submit to the Government of Canada a report every six months on June 30 and December 30, or on the following business day throughout the implementation of this Action Plan, on the number of inspectors trained by subject (e.g. intermediation/subcontracting, disguised employment relations, identification of permanent core business functions). These reports may include information on progress made under recommendations 1.4.2 (b), 1.4.3 (a).

b. Ensure adequate resources to effectively assist labour inspectors in their duties. The Government of Colombia will submit to the Government of Canada in May 2018 the internal guidelines on how labour inspectors can access those resources.

2.5 INVESTIGATE MULTIPLE COMPLAINTS FILED AGAINST A PARTICULAR EMPLOYER UNDER A SINGLE PROCESS

In response to this recommendation, the Government of Colombia will:

a. Ensure that labour inspectors implement relevant legislation and consolidate processes as permitted by the applicable law. To this end, labour inspectors will receive the necessary training as part of the training programme for labour inspectors referred to in 2.4 (a).

2.6 INCREASE SUPERVISION AND MONITORING OF LABOUR FORMALIZATION AGREEMENTS NEGOTIATED WITH COMPANIES THAT OBTAINED A PENALTY REDUCTION OR REMISSION OF A FINE FOR ILLEGAL LABOUR INTERMEDIATION OR SUBCONTRACTING TO ENSURE THAT THESE COMPANIES OFFER PERMANENT TERM CONTRACTS, RATHER THAN FIXED-TERM CONTRACTS TO WORKERS, THROUGH THE IMPLEMENTATION OF THESE AGREEMENTS

In response to this recommendation, the Government of Colombia will:

a. Visit workplaces, twice a year, where a formalization agreement is signed. The first visit will be conducted in accordance with Resolution 321 of 2013, i.e. within 30 days from the date of signing of the formalization agreement.

b. Post in the website of the Colombian Ministry of Labour the formalization agreements that are signed, including information on the number of workers formalized, the type of labour contract signed between the employer and every worker, and whether or not there was involvement of a union organization. To that end, the Government of Colombia will submit a report on the agreements that are signed every six months, on June 30 and December 30, or on the following business day, throughout the implementation of this Action Plan.

c. Comply with Resolution 321 of February 14, 2013, which establishes the conditions and requirements for entering into labour formalization agreements as provided for in Chapter II of Law 1610 of 2013. In particular, the Colombian Ministry of Labour will: (i) pay attention to requests from trade unions that would like to enter into formalization agreements; and (ii) monitor that formalization agreements are discussed with workers as established in Articles 1 and 2 of Resolution 321.

RECOMMENDATION 3: Strengthen efforts to fight impunity and violence in the country by bringing those responsible to justice

3.1 EVALUATE THE EFFECTIVENESS OF THE MANDATORY CONCILIATION PHASE (A PRECONDITION FOR THE INVESTIGATION TO START) AS REQUIRED BY THE CRIMINAL PROCEEDINGS FOR ARTICLE 200 OF THE CRIMINAL CODE AND ENSURE THAT EXISTING PROCEDURES DO NOT CURTAIL THE TIMELINESS AND EFFICIENCY OF THE ADMINISTRATION OF JUSTICE

Conciliation plays an important role in conflict resolution between the parties to the conflict. As investigations on violations of the right to freedom of association can only be initiated at the request of the victim, conciliation is a mandatory step as required under Colombia's Criminal Code. However, once the conciliation phase is exhausted and no conciliatory agreement is reached, the dynamic of an investigation is expected to allow investigations to continue to move forward in such a way that they can reach the trial stage, when applicable. The Government of Canada believes that it is necessary to move investigations that are in the preliminary phase forward and take them to the subsequent stage when applicable. The Government of Canada also notes that a high number of investigations are closed due to the fact that some actions are not considered as criminal offenses. In this context, the Government of Colombia, through the Attorney General's Office will:

a. Conduct a study on violations of the right to freedom of association (Article 200) occurred in recent years. This study will be completed by June 30, 2018. The Attorney General's Office will implement the recommendations resulting from this study and will take the necessary measures to investigate cases under Article 200.

b. Publish informational materials for prosecutors and members of the technical investigation units about anti-union behaviour and the evidence by which this behaviour may constitute a criminal offence; the implications of the violations of the right to associate freely; and the extent to which the right of freedom of association is undermined by the use of collective pacts pursuant to Article 200. The informational materials will be available by December 2018 as a result of the coordination between the Colombian Ministry of Labour and the Attorney General's Office, and it will be updated during the implementation of this Action Plan in accordance with training requirements.

3.2 REVIEW ACTIVE FILES FOR VIOLATIONS UNDER ARTICLE 200 OF THE CRIMINAL CODE, IN PARTICULAR THOSE THAT MAY NOT BE PURSUED DUE TO TIMELINES AND FOR WHICH IMMEDIATE MEASURES WOULD BE REQUIRED

In response to this recommendation, the Attorney General's Office: (a) designated specialized prosecutors in seven regional directorates (i.e. Bogotá, Cesar, Meta, Medellín, Nariño, Cali and Atlántico) where the largest number of cases are located; (b) held conciliatory sessions in 142 cases to facilitate dialogue between the parties and, if no agreement was reached, ensured that the investigation moved to the next procedural phase; (c) fostered professional linkages between labour inspectors and local prosecutors in charge of processes under Article 200; and (d) trained 18 prosecutors on the right of freedom of association with the support of the Colombian Ministry of Labour and the ILO.

In order to assess progress on the above-mentioned actions in the context of this Action Plan, the Government of Colombia, through the Attorney General's Office, will:

a. Submit an annual report on the work of the Committee in charge of the monitoring cases regarding crimes against trade unionists of the Attorney General's Office. The report will include investigations on violations of the right of freedom association and homicides, as well as their current status in the justice system[1]. The report will be submitted to the Government of Canada in the first quarter of each year of implementation of this Action Plan.

b. Develop a joint work plan between the Colombian Ministry of Labour and the Attorney General's Office for the exchange of information and training activities, which will include specific actions and relevant indicators to ensure its successful implementation. The joint work plan will be submitted to the Government of Canada in May 2018.

[1] The report will include statistical data on violations of the rights of association (Article 200) and crimes of homicide.

3.3 PROVIDE THE NATIONAL PROTECTION UNIT WITH SUFFICIENT AND PERMANENT FINANCIAL RESOURCES TO OPERATE EFFECTIVELY

In recent years, the Government of Colombia has taken a number of measures to strengthen the National Protection Unit (UNP), in particular, the budget allocated to the UNP which has increased steadily since its creation. For 2018, the UNP has a budget equivalent to 549,743 million pesos (approximately CAD$ 244,000), the highest since 2014. In addition, Decree 2078 to facilitate access to collective protection mechanisms for trade union organizations was issued on December 7, 2017. The Government of Canada, in order to continue improving access and transparency of the processes of the UNP, believes that it is important to continue the participation of civil society, particularly trade union organizations requesting measures of protection. While it informed of its intention to maintain adequate resources for the protection of trade unionists in the ministerial consultations, the Government of Colombia, under this Action Plan, will:

a. Submit a report on the number of unionists under protection and the allocated budget, including coverage and access to collective protection mechanisms, and progress on the implementation of Decree 2078 of 2017. This report will be submitted to the Government of Canada every six months, on June 30 and December 30, or on the following business day, of each year of implementation of this Action Plan.

3.4 ENSURE THAT INTER-INSTITUTIONAL COORDINATION MECHANISMS (BETWEEN THE MINISTRY OF LABOUR AND THE ATTORNEY GENERAL'S OFFICE) ARE IN PLACE FOR THE EXCHANGE OF INFORMATION AND SHARING OF RELEVANT EVIDENCE

Given the close link between administrative and criminal enforcement procedures for investigations on violations of the freedom of association, the Government of Canada noted the need for strengthened coordination between the Colombian Ministry of Labour and the Attorney General's Office. In this regard and under this Action Plan, the Government of Colombia will:

a. Establish a joint work plan which will be implemented in the first six months of the first year of implementation of this Action Plan. The work plan will serve as a framework for the ongoing exchange of information, training activities, and coordination of joint initiatives between the Colombian Ministry of Labour and the Attorney General's Office in line with recommendation 3.2 (b).

3.5 CRITICALLY AND INDEPENDENTLY EXAMINE THE ROLE OF THE ESMAD, WHOSE ACTIONS AND INTERVENTIONS HAVE BEEN STRONGLY CRITICISED BY COLOMBIAN AND INTERNATIONAL STAKEHOLDERS FOR EXCESSIVE USE OF FORCE

To respond to this recommendation, the Government of Colombia will:

a. Submit to the Government of Canada an annual report on January 30, or on the following business day, of each year of the implementation of this Action Plan, which will include information on: the number of law enforcement actions by the ESMAD disaggregated by type (i.e. preventive and intervention actions); the training and educational programs on human rights provided to members of the ESMAD; and the work carried out with international organizations to strengthen protocols and interventions.

b. Work jointly with the Government of Canada to produce an independent report on the role of the ESMAD in social protests. The Colombian National Police is firmly committed to be a key partner in the achievement of the study and its recommendations.

3.6 EFFECTIVELY ADVANCE THE INVESTIGATION OF VIOLATIONS UNDER ARTICLE 347 OF THE CRIMINAL CODE, INCLUDING BY ENSURING THAT GUILTY PARTIES ARE BROUGHT TO TRIAL WHEN WARRANTED

In response to this recommendation, the Government of Colombia will:

a. Submit a study on the inadequacies of investigations of criminal threats in June 2018. This study will serve as input for potential cooperation between the Attorney General's Office and relevant Canadian authorities.

b. Develop an investigation protocol on the offense of criminal threats including those against trade unionists, by October 2018 in order to standardize the investigation.

3.7 ENSURE THAT SPECIAL ASSIGNMENT OF FILES ARE DONE IN ACCORDANCE WITH PROPER INVESTIGATIVE PRACTICES TO AVOID UNREASONABLE DELAYS

The special assignment of files is done based on legal grounds which are communicated to the interested parties. While the Attorney General's Office indicated in the ministerial consultations that internal criteria may require that a case is assigned to a different prosecutor or to an office located in another city, in response to this recommendation, the Government of Colombia, through the Attorney General's Office, will:

a. Continue to inform in writing to the interested parties of its decision when a special assignment is required, including the reasons for the assignment.

RECOMMENDATION 4: Evaluate and report on efforts to promote freedom of association and free collective bargaining in the country

In the spirit of collaboration that characterizes their bilateral relationship and based on the mutual commitment to promote the rights of freedom of association and collective bargaining, the Government of Colombia will brief the Government of Canada, in accordance with this Action Plan, on the efforts to enhance the effective exercise of these fundamental labour rights. In this context, the Governments will:

a. Carry out consultations between NAOs every six months as of date of signing of this Action Plan to assess progress in line with the timelines specified in this Action Plan.

b. Develop a roadmap within 30 working days as of date of signing of this Action Plan to implement a methodology that will facilitate the consultations between NAOs, as well as the monitoring and the objective review of the measures adopted in this Action Plan.

c. Exchange, through their respective NAOs, either on their own initiative or at their express request, relevant and necessary information for the effective implementation of this Action Plan, including issues related to technical assistance.

d. Organize meetings with civil society groups to hear their views regarding the implementation of this Action Plan.

This Action Plan will take effect on the date of its signature by the Governments.

SIGNED in duplicate at Montreal on May 15th 2018, and at Gatineau (Qc) on May 23rd, 2018, in the English, French and Spanish languages, each version being equally valid.

FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF COLOMBIA